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Supreme Court, U.S.
FILED
AUG 15 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1808

In The
Supreme Court of the United States
October Term, 1984

JAMES WHITE, d/b/a
BLUE WAVE OYSTER CO., et al.,

Petitioners,

vs.

M/V TESTBANK, her engines, tackle,
apparel, her Owners, etc., et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION ON BEHALF OF FORTUNE SEA TRANSPORT CORPORATION, PANAMA S.A. AND THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LTD., RESPONDENTS

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SUPPLEMENTAL REASONS FOR DENYING THE WRIT

The Court's attention is respectfully called to the fact that the First Circuit Court of Appeals has now had occasion to consider the legal issue before the Court in this proceeding.

In *Barber Lines A/S, et al. v. DONAU MARU, et al.*, 764 F.2d 50 (1st Cir. 1985), the First Circuit considered an appeal with facts very much like the case involved in this proceeding. A ship spilled fuel oil into Boston Harbor which prevented another vessel from docking at a nearby berth. As a result, the second vessel incurred substantial extra expenses for which recovery was sought.

The First Circuit denied recovery on the strength of *Robins,* and so joined the ranks of all other Circuit Courts which have considered the question. In doing so, the Court discussed in some detail the Fifth Circuit's decision in this litigation, as well as the dissent, concluding that existing precedent allows no recovery for economic loss in the absence of physical damage, and that this doctrine is supported by a parcel of tort policy considerations.

The First Circuit's recent opinion is not just another opinion, but reflects instead the action of a new circuit. It can now be said that the First, Second, Fourth, Fifth, and Eleventh Circuits have passed on the question and are in full agreement. Clearly, there is no division among the

circuits and no situation which would support the granting of certiorari.

Respectfully submitted,

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